

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

PAUL W. REYES REYES	:	
	:	
v.	:	C.A. No. 16-382S
	:	
RHODE ISLAND STATE	:	
POLICE, et al.	:	

**REPORT AND RECOMMENDATION FOR
SUMMARY DISMISSAL PURSUANT TO 28 U.S.C. § 1915(e)**

Lincoln D. Almond, United States Magistrate Judge

Background

Pending before me for determination is Plaintiff's Application to Proceed In Forma Pauperis ("IFP") (Document No. 2) pursuant to 28 U.S.C. § 1915. On June 30, 2016, Plaintiff Paul W. Reyes Reyes, a Rhode Island resident, filed a pro se Complaint in this Court against the "Rhode Island State Police, Rhode Island Traffic Tribunal Cranston and Arlington Towing." Plaintiff's Complaint was accompanied by an Application to Proceed IFP without being required to prepay costs or fees, including the \$400.00 civil case filing fee. After reviewing Plaintiff's Application signed under penalty of perjury, I conclude that Plaintiff is unable to pay fees and costs in this matter and thus, Plaintiff's Application to Proceed IFP (Document No. 2) is GRANTED.

Having granted IFP status, this Court is required by statute to further review the Plaintiff's Complaint sua sponte under 28 U.S.C. § 1915(e)(2) and to dismiss this suit if it is "frivolous or malicious," "fails to state a claim on which relief may be granted" or "seeks monetary relief against a defendant who is immune from such relief." For the reasons discussed below, I recommend that Plaintiff's Complaint be DISMISSED WITHOUT PREJUDICE and with LEAVE TO FILE AN AMENDED COMPLAINT.

Standard of Review

Section 1915 of Title 28 requires a federal court to dismiss an action brought thereunder if the court determines that the action is frivolous, fails to state a claim or seeks damages from a defendant with immunity. 28 U.S.C. § 1915(e)(2)(B). The standard for dismissal of an action taken IFP is identical to the standard for dismissal on a motion to dismiss brought under Fed. R. Civ. P. 12(b)(6). See Fridman v. City of N.Y., 195 F. Supp. 2d 534, 538 (S.D.N.Y. 2002). In other words, the court “should not grant the motion unless it appears to a certainty that the plaintiff would be unable to recover under any set of facts.” Roma Constr. Co. v. aRusso, 96 F.3d 566, 569 (1st Cir. 1996). Section 1915 also requires dismissal if the court is satisfied that the action is “frivolous.” 28 U.S.C. § 1915(e)(2)(B)(I). A claim “is frivolous where it lacks an arguable basis either in law or in fact.” Neitzke v. Williams, 490 U.S. 319, 325 (1989). The First Circuit has held that the affirmative defense of the statute of limitations may justify dismissal under Section 1915, see Street v. Vose, 936 F.2d 38, 39 (1st Cir. 1991), and other courts have upheld dismissals under Section 1915 because of other affirmative defenses appearing on the face of a complaint. See e.g., Kimble v. Beckner, 806 F.2d 1256, 1257 (5th Cir. 1986).

Discussion

I recommend that Plaintiff’s Complaint be summarily dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B). In making this recommendation, I have taken all of the allegations in Plaintiff’s Complaint as true and have drawn all reasonable inferences in his favor. Estelle v. Gamble, 429 U.S. 97 (1976). In addition, I have liberally reviewed Plaintiff’s allegations and legal claims since they have been put forth by a pro se litigant. See Haines v. Kerner, 404 U.S. 519, 520-521 (1972). However, even applying these liberal standards of review to Plaintiff’s Complaint, dismissal is required.

First, Plaintiff's Complaint contains absolutely no facts supporting his claims. He alleges various constitutional violations as well as a statutory claim under RICO. He "commands judgement [sic] against defendants for illegally seized private property in the sum of \$7,000 plus interest and cost." (Document No. 1 at p. 8). Pursuant to Rule 8(a)(2), Fed. R. Civ. Proc., a Complaint must contain a short and plain statement of the claim showing that the pleader is entitled to relief. Plaintiff's Complaint violates this Rule because it contains absolutely no facts and consists solely of unsupported legal conclusions. See Bell Atl. Corp. v. Twombly, 550 U.S. 544, 559 (2007) (the complaint must contain sufficient facts to state at least a "plausible entitlement to relief"). Plaintiff alleges that he was pulled over by "Officer 127" of the Rhode Island State Police on January 25, 2015. He asserts that Officer 127 alleged that his vehicle was unregistered and that he illegally issued an order to seize private property and issue a summons. He further claims that his private property was illegally seized by Arlington Towing, without consent of the owner. However, he offers absolutely no facts supporting his claims of an unlawful seizure or violation of RICO. He offers only bald legal conclusions which fail to meet the applicable pleading standard.

Second, under the Eleventh Amendment to the United States Constitution, the states have sovereign immunity from suits brought against them for money damages in Federal Court. See Will v. Michigan Dep't of State Police, 491 U.S. 58 (1989). Here, Plaintiff sues the Rhode Island State Police and the Rhode Island Traffic Tribunal, both are arms of the State of Rhode Island, and seeks judgment against the Defendants, including these state entities, for \$7,000.00 plus interest and cost. Plaintiff does not attempt to sue "Officer 127," individually or in his or her official capacity. Thus, Plaintiff's Complaint is barred by the Eleventh Amendment as to the state entities. Further, Plaintiff does not allege or identify any potential waiver of sovereign immunity by the State of Rhode Island and, in fact, does not specifically identify the basis for any claims against the State. See Nieves-

Marquez v. Puerto Rico, 353 F.3d 108, 124 (1st Cir. 2003) (“No cause of action for damages is stated under 42 U.S.C. § 1983 against a state, its agency, or its officials acting in an official capacity.”).¹

Conclusion

For the reasons stated, Plaintiff’s Motion to Proceed In Forma Pauperis (Document No. 2) is GRANTED. However, pursuant to 28 U.S.C. §§ 1915(e)(2)(B), I further recommend that Plaintiff’s Complaint be DISMISSED WITHOUT PREJUDICE and with LEAVE TO FILE AN AMENDED COMPLAINT which remedies the pleading deficiencies identified in this Report and Recommendation.

Any objection to this Report and Recommendation must be specific and must be filed with the Clerk of the Court within fourteen days of its receipt. See Fed. R. Civ. P. 72(b); LR Cv 72(d). Failure to file specific objections in a timely manner constitutes waiver of the right to review by the District Court and the right to appeal the District Court’s decision. See United States v. Valencia-Copete, 792 F.2d 4, 6 (1st Cir. 1986); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603, 605 (1st Cir. 1980).

/s/ Lincoln D. Almond
LINCOLN D. ALMOND
United States Magistrate Judge
July 6, 2016

¹ Plaintiff also seeks to sue Arlington Towing under 42 U.S.C. § 1983 but does not allege any facts which might plausibly support a claim that Arlington Towing is a state actor subject to suit under § 1983. See Malachowski v. City of Keene, 787 F.2d 704, 710 (1st Cir. 1986). (In order to state a claim under § 1983, a plaintiff must allege “interference with a constitutionally-protected right by someone acting under color of state law....”).